In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-24

STEPHEN JEFFREY GREENWALD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the term "goods, wares, or merchandise," as used in 18 U.S.C. 2314, which makes it an offense to transport such items, if stolen, in interstate commerce, cannot properly be construed to include chemical trade secrets. He alternatively argues that such a broad interpretation renders the statutory term unconstitutionally vague.

After a jury trial in the United States District Court for the Northern District of Ohio, petitioner was convicted of having knowingly transported in interstate commerce stolen secret chemical formulae, in violation of 18 U.S.C. 2314. On August 21, 1972, he was sentenced to imprisonment for six months with probation for the balance of a three-year term. The court of appeals affirmed (Pet. App.).

The evidence is not in dispute. While employed as a chemical engineer in the sales department of Pearsall

Chemical Corporation in New Jersey, petitioner appropriated a highly restricted set of newly-discovered secret chemical formulations intended for use in fire retardation processes. While Pearsall Chemical intended to retain the secret formulations for its own use, there was uncontradicted testimony at trial that an established market for the licensing or sale of such chemical secrets existed at the time. Shortly after leaving his employment at Pearsall, petitioner contacted a Pearsall competitor in Ohio and arranged a sale of the secrets. The competitor reported petitioner's offer to the Federal Bureau of Investigation, which apprehended petitioner when he attempted to consummate the sale.

As the court of appeals held, in an opinion upon which we principally rely (Pet. App.), the term "goods, wares, or merchandise" in 18 U.S.C. 2314 is broad enough to encompass documents containing secret chemical formulations such as those involved here. The fact that petitioner's employer planned to retain the chemical secrets for use in manufacturing does not, as petitioner claims (Pet. 4), remove them from the scope of the statutory terms, for it was undisputed at trial that an outside market for the secrets did in fact exist. The formulations were of a type that is ordinarily subject to sale or license in commerce and well within the normal meaning of "goods, wares, or merchandise." See *United States* v. *Bottone*, 365 F. 2d 389, 393 (C.A. 2), certiorari denied, 385 U.S. 974; *United States* v. *Seagraves*, 265 F. 2d 876 (C.A. 3); *United States* v. *Lester*, 282 F. 2d 750 (C.A. 3), certiorari denied, 364 U.S. 937. Nor is there any merit to petitioner's claim that the statute is overly vague. As the court below stated, Section 2314 as applied here, comports with "the normal, ordinary and logical import of the statutory language * * * " (Pet. App. 4a).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

AUGUST 1973.

DOJ-1973-08